

## REMARKS

Applicant has merely canceled the phrases "threaded" and "screw" from the claims as suggested by the Examiner in her remarks concerning her drawing objections. The drawing objections are now mooted. This amendment is not new matter since a cap that is not threaded and not a screw cap can be seen as item 4 in figures 3 and 7 as originally filed, as well as claim 1 as originally filed. These amendments place the application in better condition for appeal in compliance with 37 CFR §1.116.

Applicant respectfully but vigorously traverses Examiner's characterization of the scope and content of the prior art. Businger, CH 700289 A2 has a filing date of January 29, 2009, some four years and eleven months after the filing date of the instant application. That is seven years and six months after the filing date of the parent application from which this application is a divisional application (09/922376) and eight years and six months after the priority date applicant can claim by virtue of his incorporation by reference of provisional application number 60/222,974. Businger is in no way a prior art reference with respect to this invention.

Before answering the 'content' inquiry of *Graham v. John Deere*, 383 U.S. 1 (1966) it must be known whether a patent or publication is in the prior art under 35 U.S.C. §102. (*Panduit v. Dennison Mfg. Co.*, 810 F.2d 1561, 1568, 1 U.S.P.Q. 2d 1593, 1597

(Fed. Cir.) *Cert. denied*, 481 U.S. 1052 (1987)). Businger, CH 700289 A2 was not filed until over eight years after Applicant's date of invention. There is no evidence of record that Businger invented prior to applicant. No sub-section of 35 U.S.C. 102 can possibly make Businger part of the prior art as against Chamberlain. Businger is not prior art.

Moreover, Peterson (US Patent 5,857,431) at column 2 line 5 does not recite rawhide as the functional equivalent of rubber for purposes of making a cap as Examiner suggests. Instead, it suggests that a wrapping having openings may be made of rawhide for the function of attracting a dog or it may be made of rubber (although Peterson did not say that rubber would attract a dog). In any event, a wrapper full of holes (Peterson Column 2, lines 1-3) is not performing the function of a cap which is specifically claimed by Chamberlain to deny egress from the reservoir. Peterson's wrapping absolutely is not capable of performing the function of Chamberlain's cap because it is full of holes.

With all due respect, Examiner is engaging in impermissible hindsight. Such a reconstruction is proper only when it uses knowledge within the level of ordinary skill in the art at the time the claimed invention was made and does not include knowledge gleaned only from applicant's disclosure. (*In Re McLaughlin*, 443 F.2d 1392, 1395, 170 U.S.P.Q. 209, 212 (C.C.P.A. 1971)). Peterson at most said that rawhide and rubber could both

be used as a perforated outer wrapper.

It is impermissible hindsight to say that

1. since Chamberlain discloses a cap can be edible,
2. since rawhide is edible to dogs,
3. since Peterson discloses rubber and rawhide can both be used as a perforated wrapper,
4. since eight and a half years after Applicant's date of invention Businger said a cap could be biodegradable, and
5. since (some) edible things are biodegradable,
6. that therefore Peterson makes it obvious to use rawhide as a cap. That reasoning is using knowledge gleaned from applicant's disclosure, not reasoning from any of the alleged prior art cited by Examiner.

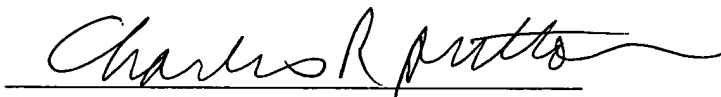
It is necessary that the decision maker forget what she has been taught about the claimed invention and cast her mind back to the time the invention was made, to occupy the mind of one skilled in the art at that time. (*W. L. Gore & Assoc. V. Garlock, Inc.* 721 F.2d 1540, 220 U.S.P.Q. 303, 313 (Fed. Cir. 1983) *cert. denied* 469 U.S. 851 (1984)). Chamberlain taught on August 4, 2000 that "The outer layer, valves, cap, fill aperture, and reservoir could all be made of substances which are edible for dogs, such as rawhide. They could also be made of biodegradable, expendable, indigestible substances such as wood so that the dog could eventually chew the toy away to nothingness." At that time, this invention was not obvious as is

evidenced by the fact that it took Businger another eight and a half years even to disclose biodegradability of a closure, let alone edibility. Peterson didn't even have a closure.

Therefore claims 1-5 and 15-20 as amended (and even before the amendment) are patentable over the prior art. No claims have been added by this amendment, there are no multiple dependent claims, and the number of pages in the application have not been increased over 100 so no fees are necessitated by this amendment.

WHEREFORE Applicant, Jeffrey Lynn Chamberlain, respectfully requests that Examiner reconsider her rejections of claims 1-5 and 15-20 made under 35 U.S.C. §103, withdraw the same, enter his claim amendments, and declare this application in a condition of allowability.

Respectfully submitted,

A handwritten signature in cursive script, reading "Charles R. Sutton", is written over a horizontal line.

Charles R. Sutton Reg. No. 42,176

(626) 510-4286